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ATTORNEYS FOR THE UNITED STATES

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:12-cv-804-LDG-GWF

v.

CLIVEN BUNDY,

Defendant.

**DECLARATION OF
DAVID D. MORLAN**

DECLARATION OF DAVID D. MORLAN

I, David D. Morlan, do declare as follows:

I have personal knowledge of the matters set forth in this declaration.

1. I am the Bureau of Land Management (BLM), Chief Cadastral Surveyor for Nevada. I also serve as the Geographic Sciences Branch Chief, Division of Support Services, BLM, Nevada State Office in Reno. I have been in this position for eight plus years.
2. I began my career as a Surveying Aide for BLM on April 16, 1979. I have over 33 years' experience surveying federal lands and working with the official federal land records.
3. In my current position, I am the final BLM authority for all official federal land surveys in the State of Nevada to ensure conformity with federal law, regulation and policy. In addition, I have sole authority to have federal lands surveyed for the first time. I am also responsible for approving and accepting official Nevada public land surveys on behalf of the Director of the Bureau of Land Management. My job duties include researching, reviewing and evaluating survey boundary records; land use records; status and title records.
4. I was asked to review the official federal land records as it relates to survey, boundary and title, to confirm the federal land ownership status of federal lands falling within the boundaries of an area identified as "New Trespass Land", as depicted on BLM GIS map titled "Bundy Cattle Trespass Area", dated 11/16/2012. See Attachment 1 (Map dated 11/16/2012). My review of the official federal land records was limited to Township/Ranges falling within the "New Trespass Land" boundaries.
5. In order to determine land status for this area, I researched and reviewed official federal records maintained by the BLM office in Reno and the Eastern States General Land Office (GLO) Records database. I also reviewed land records of the Nevada Division of State Lands.

Federal Lands in Nevada

6. All of the lands that currently make up the State of Nevada were ceded to the United States by Mexico in the Treaty of Guadalupe Hidalgo, which was signed on February 2, 1848. No lands in Nevada were granted, conveyed or deeded while under Spanish/Mexican control. All lands within Nevada are therefore federal lands unless the lands have been conveyed out of federal ownership pursuant to applicable federal laws.

7. Upon achieving statehood, the State of Nevada forever disclaimed any rights in the Public Lands through the Nevada State Constitution: "That the people inhabiting said territory do agree and declare, that they forever disclaim all rights and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States." Ordinance of the Nevada Constitution (approved September 7, 1864).
8. Once Nevada became a State, the United States conveyed land to the State of Nevada in one of two ways. The first of these was that consistent with federal law and called "State Granting", as soon as a township was surveyed and the plat for the township was approved by the GLO U.S. Surveyor General, the Federal Government automatically granted the State of Nevada title to public land sections 16 and 36 for that township.
9. The second method for conveying land to Nevada was under the Act of June 16, 1880 and called "State Selection", whereby Congress allowed the State to select other federal lands in Nevada "in lieu" of sections 16 and 36. This resulted in a state selection process under which the State provided the Federal Government with a list of "in lieu" lands the State wanted to select, for approval by the Federal Government.
10. The Nevada Division of State Lands maintains records which show the federal lands granted to or selected by the State after statehood. These records can be accessed remotely at www.delamare.unr.edu/maps.¹ The State used copies of the federal survey plats to mark the lands granted/selected by the State and then deeded by them to the private sector, comprising Sections 16 and 36 of each township or the "in lieu" lands selected instead of these sections.
11. I compared the BLM's official lands records (described below) to the Nevada Division of State Lands records maintained by the University of Nevada Reno and these records are identical in depicting the federal and state lands at the time of the state land grants and/or selections, demonstrating consistency between the federal and state land records.

Official Land Records of the United States

12. In 1812, the GLO was created to manage the public lands of the United States. The original public lands (Public Domain) in 1812 were those lands ceded to the United States from the original 13 colonies/states. The GLO also managed lands

¹ Between 2000 and 2002, the Nevada Division of State Lands scanned all of their records showing state land grants and in lieu selections. Those scanned records can be accessed by the public through a website maintained by the University of Nevada Reno.

subsequently acquired by the United States outside of the original 13 colonies/states, such as through the Louisiana Purchase or the Treaty of Guadalupe Hidalgo.

13. The GLO devised a system to track official government actions on tracts (townships) of the public lands as they were disposed of or sold. “Tract Books” were created and were used for all entries of application for land sale or disposal, as well as official actions such as withdrawals, issued patents, land & mineral contests, etc. All activities affecting federal lands in the United States were therefore recorded in the “Tract Books,” which were kept for each township in each of the States.
14. In the 1960’s, Tract Books were replaced with a modern map and narrative format: the Master Title Plat (MTP) and Historical Index (HI) that are also known as Title Records. The information from the Tract Books was transferred to the modern format of MTP and HI.
15. The MTP and HI format is in use today and continues to be used to note and map land status for the federal lands. The MTP and HI is the first “official” location an individual should look when trying to determine land status for federal lands.
16. The MTP is a pictorial diagram of every Township showing federal lands, many associated land use restrictions (such as withdrawals or reservations), rights-of-ways, all lands patented out of federal ownership, lands granted to or selected by the State of Nevada, and any lands originally conveyed to private ownership and then acquired by the United States. Patent records are accessible in digital form through the Eastern States GLO Records database. The MTPs are regularly updated to reflect any changes in federal land ownership status.
17. The HI is a chronological record of many activities on federal lands within a Township, which identifies the section or area within the Township affected, the nature of the activity (e.g., State land grants, issuance of patents, railroad grants, and acquired lands), the legal authority for the activity, the date of the activity, and any additional remarks.
18. The MTPs and HI are accessible to the public for purposes of checking land ownership status and to identify government actions affecting specific lands. These records can be accessed through the BLM’s website at: www.nv.blm.gov/LandRecords and can be searched by inputting township and range or through a map-based search. Patents issued by the United States are also available to the public through the BLM’s website.
19. In order to confirm that the federal land status as indicated within the “New

“Trespass Land” area in Attachment 1 is accurate, I reviewed the MTP’s and the HI’s for every township falling within the “New Trespass Land” area (approximately 42 in number), except for 12 townships that are still unsurveyed.

20. It was not necessary to review the MTPs and HIs for the 12 unsurveyed townships, because by law, federal land cannot be conveyed, sold or disposed of until the lands have been “officially” surveyed. Since these 12 townships have never been surveyed, no federal lands have been disposed of in these 12 unsurveyed townships and remain federal lands.
21. The federal land record confirms that the federal lands in the remaining 30 townships have largely remained in federal ownership since the Treaty of Guadalupe-Hidalgo (i.e. have never been conveyed out of federal ownership). And for nine of those 30 townships within the “New Trespass Land” area, some private lands have been acquired by the United States over the years. Acquired lands are lands that were originally owned by the United States and conveyed (patented, State granted/selected) out of federal ownership to private ownership, and then acquired and returned to federal ownership at a later date. The official records identify these acquired lands either by notation on the MTP and/or within the HI. The underlying documentation is secured in case files and tracked through a systematic numbering system in the event such records need to be reviewed for the details of the acquisition.
22. My review of the official land records of the United States and review of State of Nevada’s state granting/selection maps confirms that as indicated in Attachment 1, the vast majority of lands in the townships falling within the “New Trespass Land” area (approximately 97%) are federal lands. Due to the scale of the map, some of the lands within the “New Trespass Land” area that are non-federal lands (i.e. private or state lands), are not visible or identifiable in Attachment 1, but their non-federal land status is reflected in the official records of the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Signed this 14th day of December, 2012 in Reno, Nevada.



David D. Morlan

ATTACHMENT 1

